



128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1587

H.P. 1091

House of Representatives, May 9, 2017

**An Act To Provide Economic Security to Maine Families through
the Creation of a Paid Family Medical Leave System**

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

Robert B. Hunt

ROBERT B. HUNT
Clerk

Presented by Representative HERBIG of Belfast.
Cosponsored by Senator VOLK of Cumberland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 26 MRSA §843, sub-§1-A** is enacted to read:

3 **1-A. Bureau.** "Bureau" means the Bureau of Unemployment Compensation as
4 defined in section 1043, subsection 5-A.

5 **Sec. 2. 26 MRSA §843, sub-§3-A** is enacted to read:

6 **3-A. Fund.** "Fund" means the Family Medical Leave Fund established in section
7 1167.

8 **Sec. 3. 26 MRSA §843, sub-§4, ¶D,** as repealed and replaced by PL 2007, c.
9 519, §1, is amended to read:

10 D. A child, domestic partner's child, parent, domestic partner, sibling, parent-in-law,
11 brother-in-law, sister-in-law or spouse with a serious health condition;

12 **Sec. 4. 26 MRSA §843, sub-§4, ¶F,** as amended by PL 2007, c. 519, §2, is
13 further amended to read:

14 F. The death or serious health condition of the employee's spouse, domestic partner,
15 parent, sibling, parent-in-law, brother-in-law, sister-in-law or child if the spouse,
16 domestic partner, parent, sibling, parent-in-law, brother-in-law, sister-in-law or child
17 as a member of the state military forces, as defined in Title 37-B, section 102, or the
18 United States Armed Forces, including the National Guard and Reserves, dies or
19 incurs a serious health condition while on active duty.

20 **Sec. 5. 26 MRSA §843, sub-§4-B,** as enacted by PL 2007, c. 233, §1, is repealed.

21 **Sec. 6. 26 MRSA §843, sub-§8,** as enacted by PL 2007, c. 519, §3, is amended to
22 read:

23 **8. Sibling.** "Sibling" means a sibling of an employee ~~who is jointly responsible with~~
24 ~~the employee for each other's common welfare as evidenced by joint living arrangements~~
25 ~~and joint financial arrangements, including a half-sibling or step-sibling.~~

26 **Sec. 7. 26 MRSA §844, sub-§4** is enacted to read:

27 **4. Repeal.** This section is repealed October 1, 2019.

28 **Sec. 8. 26 MRSA §844-A** is enacted to read:

29 **§844-A. Family medical leave**

30 **1. Family medical leave entitlement.** An employee of an employer that employs 15
31 or more employees who has been employed by the same employer or a self-employed
32 person who has made contributions under subsection 2 for 12 of the prior 18 months is
33 entitled to benefits for up to 8 workweeks of family medical leave per year. The

1 following conditions apply to family medical leave benefits granted under this
2 subchapter:

3 A. Unless prevented by a medical emergency from giving notice, an employee shall
4 provide at least 30 days' notice to the employee's employer and a self-employed
5 person shall provide at least 30 days' notice to the bureau of the intended dates upon
6 which family medical leave will commence and terminate; and

7 B. An employee or self-employed person shall obtain certification from a physician
8 to be submitted to the bureau pursuant to subsection 4 to verify the amount of leave
9 requested by the employee or self-employed person, except that an employee or
10 self-employed person who in good faith relies on treatment by prayer or spiritual
11 means, in accordance with the tenets and practice of a recognized church or religious
12 denomination, may submit certification from an accredited practitioner of those
13 healing methods.

14 **2. Contribution.** An employee entitled to benefits under chapter 13 shall pay a
15 contribution to the fund in an amount of a percentage of the employee's wages under the
16 rate of contribution determined by the bureau in subsection 3. The employer of the
17 employee shall deduct the amount of contribution from the employee's wages.
18 Contributions under this subsection become due and must be paid by each employer to
19 the bureau for the fund on or before the last day of the month following the close of the
20 calendar quarter to which the contributions relate. In the calculation of any contribution, a
21 fractional part of a cent must be disregarded unless it amounts to 1/2¢ or more, in which
22 case it must be increased to one cent. A person who is self-employed may receive
23 benefits from the fund upon application to the bureau and payment to the bureau of a
24 contribution in the amount determined by the bureau under subsection 3.

25 **3. Rate of contribution.** The bureau shall calculate annually the rate of contribution
26 under subsection 2 of an employee or self-employed person entitled to family medical
27 leave. The rate of contribution may not exceed 0.5% of an employee's gross wages or a
28 self-employed person's gross earnings. The bureau may employ a 3rd-party actuary or
29 other qualified person to determine the rate of contribution necessary to properly
30 administer the fund.

31 **4. Notice.** When an employee has notified an employer pursuant to subsection 1 of a
32 circumstance allowing family medical leave, the employer shall report the notice to the
33 bureau within 7 days after the employer receives the notice. Certification required under
34 subsection 1, paragraph B must accompany the employer's report under this subsection or
35 the self-employed person's notice under subsection 1. An employer or self-employed
36 person shall also report the average weekly wages or earnings of the employee or self-
37 employed person, as similarly defined for an injured employee in Title 39-A, section 102,
38 subsection 4, together with any other information required by the bureau. The statement
39 must report the wages or earnings of the employee or self-employed person on a weekly
40 basis, unless the employee or self-employed person is paid on other than a weekly basis,
41 in which case the employer or self-employed person may report the wages or earnings on
42 the same basis as wages or earnings are paid. A copy of the wage information must be
43 mailed to the employee. If the bureau determines that a notice does not provide a
44 circumstance allowing family medical leave under or is otherwise in violation of this

1 chapter, the bureau may not pay a benefit under subsection 5 and shall notify the
2 employer and employee or self-employed person as soon as possible after the
3 determination is made.

4 **5. Benefits.** The bureau shall pay from the fund a family medical leave benefit to an
5 employee or self-employed person who pays a contribution under subsection 2 within a
6 reasonable time after receiving notice for that employee or self-employed person under
7 subsection 4. A benefit under this subsection must be 66% of the weekly wages or
8 earnings of the employee or self-employed person, except that the benefit may not exceed
9 the maximum benefit allowed under chapter 13. If an employer provides a family
10 medical leave benefit to an employee entitled to a benefit under this chapter, the
11 employee shall receive the greater of the employer-provided benefit and the benefit under
12 this subsection. If an employer provides a family medical leave benefit to an employee
13 entitled to a benefit under this chapter that is greater than the benefit under this
14 subsection, the bureau shall pay to the employer the benefit to which the employee is
15 entitled under this subsection.

16 **6. Leave taken intermittently or on reduced leave schedule.** Intermittent or
17 reduced leave schedule family medical leave may be taken subject to the following
18 limitations.

19 A. Leave for a reason described in section 843, subsection 4, paragraph B or C may
20 not be taken by an employee intermittently or on a reduced leave schedule unless the
21 employee and the employer agree otherwise. Subject to subsection 1, paragraphs A
22 and B, leave for a reason described in section 843, subsection 4, paragraph A, D or E
23 may be taken intermittently or on a reduced leave schedule when medically
24 necessary. The taking of leave intermittently or on a reduced leave schedule pursuant
25 to this paragraph may not result in a reduction in the total amount of leave to which
26 the employee is entitled under subsection 1 beyond the amount of leave actually
27 taken.

28 B. If an employee requests intermittent leave, or leave on a reduced leave schedule,
29 for a reason described in section 843, subsection 4, paragraph A, D or E that is
30 foreseeable based on planned medical treatment, the employer may require the
31 employee to transfer temporarily to an available alternative position offered by the
32 employer for which the employee is qualified and that:

33 (1) Has equivalent pay and benefits; and

34 (2) Better accommodates recurring periods of leave than the regular employment
35 position of the employee.

36 **7. Small employers.** An employer that employs fewer than 15 employees may opt
37 to participate in family medical leave under this section on a year-to-year basis. The
38 department may extend by rule the period of participation in family medical leave under
39 this subsection up to 3 years if the department determines that a longer participation
40 period is necessary for the stability of the fund or to carry out the provisions of this
41 section.

42 **8. Self-employed persons.** A self-employed person who has elected to participate in
43 family medical leave under this section must participate for a period of at least 2 years.

1 The department may extend by rule the period of participation in family medical leave
2 under this subsection up to 4 years if the department determines that a longer
3 participation period is necessary for the stability of the fund or to carry out the provisions
4 of this section.

5 **9. Rules.** The bureau may adopt routine technical rules as defined by Title 5, chapter
6 375, subchapter 2-A to carry out the provisions of this chapter.

7 **10. Effective date.** This section takes effect October 1, 2019.

8 **Sec. 9. 26 MRSA §1082, sub-§15** is enacted to read:

9 **15. Family medical leave.** The commissioner, through the bureau, shall administer
10 chapter 7, subchapter 6-A and the Family Medical Leave Fund under section 1167.

11 **Sec. 10. 26 MRSA §1167** is enacted to read:

12 **§1167. Family Medical Leave Fund**

13 **1. Fund established.** The Family Medical Leave Fund, referred to in this section as
14 "the fund," is established in the bureau to issue benefits to employees and self-employed
15 persons entitled to benefits under chapter 7, subchapter 6-A and to cover reasonable
16 administrative expenses of the bureau in administering the fund. The fund consists of
17 revenues received from contributions collected under section 844-A, subsection 2,
18 appropriations, allocations and contributions from private and public sources. The fund,
19 to be accounted within the Bureau of Unemployment Compensation, must be held
20 separate and apart from all other money, funds and accounts. Eligible investment earnings
21 credited to the assets of the fund become part of the assets of the fund. Any unexpended
22 balances remaining in the fund at the end of any fiscal year do not lapse and must be
23 carried forward to the next fiscal year.

24 **2. Rules.** The bureau may adopt routine technical rules as defined in Title 5, chapter
25 375, subchapter 2-A to carry out the purposes of the fund.

26 **Sec. 11. Department of Labor to develop implementation plan for family**
27 **medical leave program; report.** The Department of Labor shall develop a plan to
28 implement the family medical leave program under the Maine Revised Statutes, section
29 844-A, referred to in this section as "the program." The plan must include elements
30 necessary for implementation of the program, including:

- 31 1. Staffing and technology needed to operate the program;
- 32 2. Rulemaking required to implement the program;
- 33 3. Initial start-up costs to begin the program;
- 34 4. With the assistance of a 3rd-party actuary or other qualified person, determine the
- 35 initial rate of contribution necessary to properly administer the program;

1 5. A timeline that schedules implementation benchmarks to meet the program's
2 effective date of October 1, 2019; and

3 6. Any recommended legislation, including a provision to allocate or appropriate
4 \$150,000 or another amount the department determines appropriate to the Family
5 Medical Leave Fund under Title 26, section 1167, to provide for start-up expenses.

6 The Department of Labor shall submit the plan required under this section to the Joint
7 Standing Committee on Labor, Commerce, Research and Economic Development no
8 later than October 1, 2018.

9 **SUMMARY**

10 This bill creates a paid family medical leave program, patterned after the unpaid
11 family medical leave program existing in current law but requiring a contribution from an
12 eligible employee, or a self-employed person on a voluntary basis, of no more than 0.5%
13 of the employee's or self-employed person's wages or earnings. The program requires
14 employers to deduct the contributions from employee paychecks and for the employers
15 and self-employed persons to submit contributions to the Department of Labor, Bureau of
16 Unemployment Compensation, which is charged with administering the program. The
17 program pays benefits of up to 66% of an employee's wages or self-employed person's
18 earnings capped at the same maximum amount as unemployment benefits for leave taken
19 by the employee or self-employed person for various family-related medical issues. This
20 bill makes participation optional for employers that employ fewer than 15 employees.
21 This bill also directs the Department of Labor to develop an implementation plan dealing
22 with staffing, technology, start-up expense, rulemaking and scheduling to begin the
23 program on its effective date of October 1, 2019.